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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1982

LOCAL NO. 82, FURNITURE AND PIANO MOVING, FURNITURE STORE DRIVERS, HELPERS, WAREHOUSEMEN, AND PACKERS; BART GRIFFITHS, SECRETARY-TREASURER, LOCAL NO. 82; GEORGE HARRIS, PRESIDENT, LOCAL NO. 82; PHILLIP PIEMONTESE, CHAIRMAN OF THE ELECTION COMMITTEE OF LOCAL NO. 82; and JOHN DOE, JAMES DOE and JEROME DOE, MEMBERS OF THE ELECTION COMMITTEE OF LOCAL NO. 82,

Petitioners,

v.

JEROME CROWLEY, ANTHONY COYNE, JOSEPH FAHEY, ROBERT LUNNIN, JAMES HAYES, GERALD OWENS, JOHN LYNCH, JOSEPH TRASK, JOSEPH MONTAGNA, and DENNIS BATES,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

GARY S. WITLEN
Counsel of Record
25 Louisiana Ave., N.W.
Washington, D.C. 20001
(202) 624-7466

KATHRYN M. NOONAN
McDONALD & NOONAN
27 School St.
Boston, Mass. 02108
(617) 523-1624
Attorneys for Petitioners

DAVID PREVIANT
25 Louisiana Ave., N.W.
Washington, D.C. 20001
(202) 624-6945
Of Counsel

WILSON - EPES PRINTING CO., INC. - 789-0096 - WASHINGTON, D.C. 20001

QUESTIONS PRESENTED FOR REVIEW

1. Does § 102 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. § 412, authorize a district court, on the basis of a suit by individual union members, to order a union to conduct an election of officers under the supervision of third parties not associated with the union, who have been appointed by the court and utilizing election rules and procedures prescribed by the court?

2. Do the remedies prescribed by § 402 of the Act, 29 U.S.C. § 482, for resolving disputes concerning the election of union officers proscribe the jurisdiction of the district court to enjoin the tabulation of ballots cast after the balloting process has been virtually completed?

LIST OF PARTIES

In addition to the parties listed in the caption, the Secretary of Labor intervened as an appellant in the court of appeals in opposition to the lower court's holding on jurisdiction.

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Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

Petitioners, Local No. 82, Furniture and Piano Moving, Furniture Store Drivers, Helpers, Warehousemen, and Packers; Bart Griffiths, Secretary-Treasurer, Local No. 82; George Harris, President, Local No. 82;[1] Phillip Piemontese, Chairman of the Election Committee of Local 82; and John Doe, James Doe and Jerome Doe, Members

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[1] George Harris is no longer the President of Local 82, having been defeated for re-election in the election conducted by order of the district court.

of the Election Committee of Local 82, respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the First Circuit in this case.

OPINIONS BELOW

The opinion of the District Court for the District of Massachusetts is officially reported at 521 F. Supp. 614, and is reprinted in App. A, pp. 1a-40a. The opinion of the United States Court of Appeals for the First Circuit has been reported at 679 F.2d 978 and is reprinted in App. B, pp. 41a-93a.

JURISDICTION

The judgment of the Court of Appeals for the First Circuit was entered on May 21, 1982, and is reprinted in App. C, p. 94a. On June 15, 1982, the Court of Appeals entered an order denying Defendants-Appellants' petition for rehearing and suggestion for rehearing en banc. It is reprinted in App. D, p. 95a. This Court has jurisdiction to review the judgment of the court below pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves Sections 102, 402 and 403 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. §§ 412, 482, and 483. These, and other relevant statutory provisions, are reprinted in App. E, pp. 96a-103a.

STATEMENT OF THE CASE

1. Statement of Facts

Local Union 82 is a labor organization required to conduct its election of officers no less than once every three years. 29 U.S.C. § 481(b).[3] Respondents are members of that union, which consists of approximately seven hundred

[3] App. E, p. 98a.

employees of companies engaged in the furniture moving business in the Boston area. The union is governed by a seven-member elected executive board. At the time suit was brought, Bart Griffiths was the elected secretary-treasurer and principal executive officer, and George Harris was the elected president.

On November 9, 1980, Local 82 conducted a meeting at which members in good standing were afforded the right to nominate candidates to run for all seven elective offices. The local union executive board had previously exercised its authority under the union's bylaws and decided to conduct the election by mail referendum balloting, the balloting procedure utilized in prior elections. The ballots were scheduled to be tabulated on December 13, 1980, and had to have been returned to a designated post office box by 9:00 a.m. on that date in order to be counted. (Def. Trial Exh. 12, App. H, p. 113a)

At the November 9, 1980 nomination meeting, a dispute arose over the requirement that members verify their good standing status within the union, a requisite for attending and participating in the meeting. The local required members to produce a receipt showing that their dues had been paid through the month prior to the nomination meeting (October, 1980), as required by the union's bylaws. One plaintiff, Jerome Crowley, was denied entry to the meeting when he failed to proffer the receipt and refused the union's offer to delay the meeting so that he could return home to obtain the necessary document. Several other members were also denied entry because of their failure to produce the required receipt. However, the meeting was attended by more members than any other meeting conducted by the local union during the prior two years.

After questions regarding entry to the hall were resolved, Griffiths opened the meeting and announced that the local union's meeting attendance requirement for eligi-

bility to run for office would not be enforced. As a result, the only requirement to become a candidate for office was that a member's dues had to have been paid in a timely manner during each of the twenty-four consecutive months prior to nomination. Griffiths then read a list containing the names of sixteen members who were "eligible" to run for office and another list with the names of eleven "ineligible" members, the latter of which included an incumbent officer.[3] The remainder of the 700 members was not on either list. At this point the meeting became disorderly but the nomination process was, nonetheless, begun. Griffiths was nominated for the office of secretary-treasurer and, according to plaintiffs, Lynch was as well. Defendants assert that Griffiths was the only candidate nominated for secretary-treasurer while Lynch was nominated for the office of president, along with the incumbent Harris and John Perry.[4] Nominations for the remaining five offices were less controversial. The most important event during the nomination meeting for purposes of this litigation was the recording of Lynch's nomination.

Balloting packets were subsequently distributed to the local union's membership during November, 1980, and included instructions that ballots be deposited in the mail by December 12, 1980, in time to be recovered from the designated post office on the morning of December 13, 1980. (Def. Trial Exh. 42, App. H, p. 115a) The ballots were to be tabulated immediately thereafter.

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[3] Plaintiffs Crowley, Coyne, Lunnin and Hayes were listed as "ineligible"; Lynch was on the "eligible" list. None of the other plaintiffs was on either list.

[4] Lynch testified that he was nominated for the office of president (App. B, p. 69a) but the district court concluded that he was nominated for the office of secretary-treasurer (App. A, p. 20a-21a), presumably based upon testimony of other plaintiffs. The court of appeals noted Lynch's own testimony, but refused to set aside the district court's finding as being clearly erroneous. (App. B, p. 70a)

2. Proceedings Below

A. The District Court

Plaintiffs filed suit on December 1, 1980, after the balloting packets had been mailed to Local 82's members, invoking the district court's jurisdiction under Section 102 of the LMRDA, 29 U.S.C. § 412. A total of ten "claims" were made, all concerning events which occurred prior to or during the nomination meeting. Five "claims" charged denial of equal rights in violation of 29 U.S.C. § 411(a)(1),[5] three alleged denial of the right to free speech in violation of 29 U.S.C. § 411(a)(2),[6] one asserted unlawful discipline in violation of 29 U.S.C. § 411(a)(5),[7] and one charged a violation of the right to nominate candidates protected under 29 U.S.C. § 481(e).[8] The complaint sought preliminary relief in the form of an order nullifying the November 9, 1980 nomination meeting and directing the local union to conduct a new nomination meeting with safeguards to ensure that each member could exercise his or her statutory rights. The district court issued a temporary restraining order on the afternoon of December 12, 1980, the day before the ballots were to be tabulated and the last day on which they could be marked and mailed, for the stated purpose of preserving its jurisdiction.[9] The defendants were enjoined from tabulating the ballots and were directed to deliver all ballots retrieved from the post office box on December 13, 1980 into the court's possession.

A five day evidentiary hearing was conducted during December, 1980 on the motion for preliminary relief. Plaintiffs moved to amend the complaint on January 30,

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[5] App. E, p. 96a.

[6] App. E, p. 96a.

[7] App. E, pp. 97a-98a.

[8] App. E, pp. 99a-100a.

[9] The temporary restraining order is reprinted at App. F, p. 104a.

1981, pursuant to Rule 15(b), F.R.C.P., adding an allegation that the local union had violated 29 U.S.C. § 411(a)(3)[10] by improperly establishing dues rates during the period since 1976.

After numerous other hearings regarding the terms of an order and an evidentiary hearing limited to the dues issue raised in the amended complaint, the district court issued a preliminary injunction and memorandum opinion on July 13, 1981. The court found that it had Title I jurisdiction on the basis of the allegations that the defendants had violated §§ 101(a)(1) and (2) by imposing the dues receipt requirement as a condition of admission to the nomination meeting and by refusing to allow Lynch to run for the office of secretary-treasurer.[11] The district court concluded that it lacked Title I jurisdiction to review the union's candidate-eligibility requirements and also found that plaintiffs had not established a reasonable likelihood of success on their claim that those rules had been imposed in retaliation for their exercise of § 101(a)(2) free speech rights or were discriminatorily applied.[12]

To remedy the two nomination meeting related violations over which it concluded it had jurisdiction, the district court entered an injunction nullifying the November 9, 1980 nomination meeting, restraining the union from counting the ballots cast in the December 13, 1980 election, and ordering a new nomination meeting and election under terms and conditions established by the court.[13] The court appointed third parties who were

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[10] App. E, pp. 96a-97a. Plaintiffs' motion was granted on February 27, 1981, and the district court conducted an additional evidentiary hearing on March 6, 1981, which was limited to the new issues in the amended complaint.

[11] App. A, p. 13a.

[12] App. A, pp. 12a, 22a-23a.

[13] The full injunction is reprinted in App. B, pp. 86a-93a.

neither officers nor members of the union to supervise the new nomination and election and authorized them to render decisions concerning candidate and voter-eligibility, bypassing the union's constitutional procedures. The third parties were also vested with responsibility for arranging for the distribution of campaign literature for all candidates, although no issue had been raised as to the propriety of the union's actions in that regard in the first election. Defendants' request for a stay of those aspects of the injunctive order directing that a new election be held immediately was denied by the district court, as was defendants' request that plaintiffs be required to post a bond to secure the costs of the new election.

B. The Court of Appeals

An appeal was taken from the district court's decision, pursuant to 28 U.S.C. § 1292. Defendants' motion for a stay of the order to conduct an election pending appeal was denied by the court of appeals. On December 28, 1981, the Secretary of Labor's motion for leave to intervene as an appellant was granted. The First Circuit panel which heard the appeal issued a majority opinion and judgment affirming the district court's decision on May 21, 1982.

Addressing the jurisdictional question, the majority of the panel held that the district court properly exercised its authority under Title I to remedy the two statutory violations which occurred at the nomination meeting. The court focused on the word "conducted" in § 403, 29 U.S.C. § 483, and concluded that a suit involving election-related issues was not subject to the exclusive jurisdiction of the Secretary of Labor "until all the ballots are counted." App. B, p. 67a.[14] While the court of appeals acknowl-

[14] In focusing on this issue, which was raised primarily by the Secretary of Labor, the majority of the Circuit Court panel ignored the union's basic argument that the district court, regardless of whether it had Title I jurisdiction to remedy nomination

edged that the legislative history was silent as to the precise point at which an election has been "conducted" and noted that this Court has consistently recognized the role of the Secretary of Labor in resolving election-related disputes, it read this Court's decisions in *Trbovich* v. *United Mine Workers*, 404 U.S. 528 (1972) and *Dunlop* v. *Bachowski*, 421 U.S. 560 (1975), as undercutting the policy of judicial non-interference in union elections articulated in *Calhoon* v. *Harvey*, 379 U.S. 134 (1964). App. B, p. 52a. The lower court proceeded to review the legislative history of the LMRDA and concluded that Congress did not intend Title I rights to be subordinated by Title IV, a result which, in its view, would occur were union members required to process election disputes through the Secretary of Labor under § 402, 29 U.S.C. § 482, rather than having direct access to the federal courts. App. B, pp. 63a, 65a-66a. The majority interpreted the legislative history providing a private right of enforcement of Title I as evidencing Congress' lack of faith in the ability of the Secretary to enforce Title I rights. The panel adopted the views of commentators who have criticized this Court's *Calhoon* decision on the basis that requiring members to rely on the Secretary of Labor for resolution of election problems allegedly will result in the non-enforcement of important statutory guarantees.[15]

With respect to other issues presented in the appeal, the Circuit Court concluded that the issuance of an injunction directing that a new election be conducted was not an abuse of the district court's discretion, even though it had

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meeting misconduct, lacked authority to supervise a new election of officers since Congress specifically vested that remedy in the Secretary of Labor. The union's argument was adopted by Circuit Judge Campbell in dissent. App. B, pp. 82a-85a.

[15] "[F]oreclosure of Title I claims once balloting begins would prevent effective relief for violations that occur during the election, such as denial of access to the polling place or failure to provide a minority with ballots." (Citation omitted) App. B, p. 66a.

the effect of awarding ultimate relief on the merits.[16] Finally, the court of appeals affirmed the district court's finding that plaintiffs need not post a bond to secure the injunction, pursuant to Rule 65(c), Federal Rules of Civil Procedure.

Writing in dissent, Circuit Judge Campbell was "unable to read Title I as extending so far as to allow a district court, once balloting has commenced, to invalidate an election and order a new one under its supervision and under terms and conditions extemporized by the courts and parties." App. B, p. 82a. He recognized that the majority's decision "would allow relief under Title I (ordering and supervising a new election) which heretofore has existed only under Title IV." *Id.* at 83a. Rejecting the majority's finding that Titles I and IV could be accommodated merely by determining the point in the election process at which a complaint had been filed, Circuit Judge Campbell would have made that determination turn on the nature of the relief requested as well as the stage which the election process has reached. *Id.* at 83a-85a. If the requested relief required the conduct of a new election, a remedy specifically provided by Title IV, many concerns would argue against finding Title I jurisdiction. However, if relief could be granted which did not require a new election to be conducted, Title I jurisdiction might be invoked.

REASONS FOR GRANTING THE WRIT

At issue in this case is the authority of a district court to require a union to nullify an ongoing election of officers and to conduct a new election in a different form or manner than is required by its own constitution or bylaws in response to a suit brought by an individual mem-

[16] Indeed, the relief requested by plaintiffs was only that Local 82 be ordered to conduct a new nomination meeting, not that a new election be held under the supervision of third parties not associated with the union who were appointed by the district court.

ber of the union under Title I. Previously, courts have held that only the Secretary of Labor may bring suit to nullify the results of an election of officers and only on the basis of a complaint processed in accordance with § 402, 29 U.S.C. § 482.

The threshhold question is one of statutory construction: did Congress, in enacting § 102 of the LMRDA, intend to divest the Secretary of Labor of the authority conferred on that office by §§ 402 and 403 to review union elections of officers, to determine whether statutory violations occurred which warranted setting aside the elections, and to supervise any subsequent election utilizing rules and regulations determined to be consistent with the Act.

If it is determined that Congress intended § 102 to authorize the district courts, in response to a suit brought by an individual union member, to grant relief requiring the union to conduct a rerun election of officers in a manner different than is required by its own constitution and under the direct supervision and control of the court, then the case poses a second question: at what point is an election considered to be "already conducted" for purposes of § 403.

The United States Department of Labor has reported the existence of some 53,489 labor organizations subject to the requirements of the LMRDA.[17] The vast majority are local unions required to conduct elections of officers no less frequently than once every three years.[18] While Congress, in enacting the LMRDA, recognized the "desirability of minimum interference by Government in the internal affairs of any private organization," [19] the effect

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[17] *Compliance, Enforcement and Reporting in 1978*, U.S. Department of Labor, G.P.O. at 29 (1981).

[18] Section 401(b), 29 U.S.C. § 481(b); App. E, p. 98a.

[19] S. Rep. No. 187, 86th Cong., 1st Sess. at 7 (1959).

of the decisions of the lower courts in this case will be, and already has been,[20] to create a private cause of action which will involve the courts in the routine procedures of conducting union elections of officers. Such development will permit individual union members to circumvent the statutory enforcement mechanism which was specifically adopted to minimize the disruptive effects of election-related litigation on the administration of labor unions. *Trbovich* v. *United Mine Workers*, *supra*, 404 U.S. at 532.

In expanding the coverage of Title I in the area of elections of union officers, the First Circuit's holding is at odds with the recent decisions of this Court regarding the scope of that provision of the statute.[21] In determining that an election has not been "already conducted" until the ballot tabulation process has been completed, the majority's ruling conflicts with decisions in the Second and Third Circuits. Thus, the questions raised by this case are significant and will be recurring.

I. CONGRESS DESIGNATED THE SECRETARY OF LABOR AS THE SOLE AGENT TO SUPERVISE ELECTIONS OF UNION OFFICERS

A. Legislative History

The LMRDA is the "first comprehensive regulation by Congress of internal union affairs." *NLRB* v. *Allis Chalmers Manufacturing Co.*, 388 U.S. 175, 193 (1967). Title IV was adopted after an "extensive and vigorous debate" over the methods for ensuring that union members could select their leaders through "free and democratic elections." *Wirtz* v. *Glass Bottle Blowers*, 389 U.S. 463, 470-71 (1968). It was the product of the legislative process, with those committed to establishing minimal

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[20] *See, Canez* v. *Guerrero*, —— F. Supp. ——, Civ. No. 82-811 (D. Ariz. filed June 5, 1982); reprinted in App. G. pp. 106a-111a.

[21] *See, Finnegan* v. *Leu*, —— U.S. ——, 50 U.S.L.W. 4480 (U.S. May 17, 1982), and *Steelworkers* v. *Sadlowski*, —— U.S. ——, 50 U.S.L.W. 4626 (June 14, 1982).

standards for union elections prevailing over those who would have legislated detailed procedures for unions to follow.[22] All of the major bills considered by the Congress vested the Secretary of Labor, the agent of government "most familiar with union problems," [23] with authority to supervise any rerun election.[24]

The legislative history of Title I provides no evidence to support the First Circuit's conclusion that district courts may exercise Title I jurisdiction to supervise elections of union officers and, in so doing, are free to supplement the procedures specified in Title IV. This Court has recognized that Title IV, not Title I, is the special "vehicle" through which Congress sought to assure democracy in elections of union officers. *Wirtz* v. *Hotel Employees Union*, 391 U.S. 492, 498 (1968). Congress believed that only essential standards should be imposed by legislation and, in Title IV, set forth certain minimum electoral standards. S. Rept. No. 1684, 85th Cong., 2d Sess., at 4-5 (1958). So long as unions conform with these standards, they are free to run their own elections. *Wirtz* v. *Glass Bottle Blowers*, *supra*, 389 U.S. at 471; *Steelworkers* v. *Sadlowski*, *supra*, 50 U.S.L.W. at 4630.

The First Circuit's conclusion that Congress added Title I to supplement the electoral procedures of Title IV because of a lack of faith in the Secretary's enforcement abilities or to authorize judicial activism in the area of union elections [25] is unsupported by the legislative history. In considering Title I, Congress was motivated by the same principles that formed Title IV and the remaining provisions of the Act; namely, a desire to correct specific abuses while minimizing the extent of federal intrusion

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[22] S. Rept. No. 187, *supra*, at 7.

[23] *Calhoon* v. *Harvey*, *supra*, 371 U.S. at 139-40.

[24] *See*, National Labor Relations Board, Legislative History of the Labor-Management Reporting and Disclosure Act of 1959 [hereinafter, "Leg. Hist. at ——"], at 727-29 (Elliot bill); 657-59 (Landrum-Griffin bills); 907-09 (Shelley bill).

[25] App. B, pp. 59a, 67a.

into internal union affairs. Senator McClellan described his proposed amendment as "minimum standards of democratic processes," "the very minimum," "the basic things" required to address specific abuses.[26] A substitute was offered by senators who explained that their intent was to "remove the extremes raised by the [McClellan] amendment."[27] This amendment was approved by an overwhelming majority in the Senate, including Senator McClellan.[28] The House subsequently approved this compromise "bill of rights" without even considering it in committee.[29]

Thus, the legislative history does not support the First Circuit's conclusion that Congress intended Title I to supplement and expand the provisions of Title IV.[30] In fact, the legislative history demonstrates that in the area of union elections of officers, specific proposals to limit the Secretary's exclusive authority to bring suit under § 403 were repeatedly defeated.[31] Moreover, all of the major bills considered during the lengthy legislative process relied upon the Secretary of Labor to conduct rerun elections of officers and to establish the terms of such elec-

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[26] II Leg. Hist. at 1098, 1100, 1103.

[27] II Leg. Hist. at 1234 (Sen. Cooper). *See also*, Aaron, *The Labor-Management Reporting and Disclosure Act of 1959*, 73 Harv. L. Rev. 851, 855-60 (1960). [hereinafter, "Aaron, at ——"].

[28] II Leg. Hist. at 1239.

[29] Cox, *Internal Affairs of Labor Unions Under the Labor Reform Act of 1959*, 58 Mich. L. Rev. 819, 833 (1960) [hereinafter, "Cox, at ——."].

[30] Nor does the legislative history suggest that Congress lacked faith in the Secretary of Labor's ability to ensure democratic procedures. App. B, p. 59a. The lower court overlooked the fact that private enforcement of Title I was substituted in the Kuchel amendment for the governmental enforcement provided by the McClellan proposal primarily to placate Southern legislators concerned with creating a precedent for civil rights legislation. Cox, *supra*, at 832-33; Aaron, *supra*, at 859; II Leg. Hist. at 1223-24 (Sen. Johnston).

[31] 104 Cong. Rec. 1105 (1958); II Leg. Hist. at 984.

tions. Not one word of the legislative history supports the theory that those functions were to be performed by a district court.

B. The Decisions of The Lower Courts In This Case Are In Direct Conflict With The Decisions of This Court on This Issue

The First Circuit's erroneous conclusion that Title 1 authorizes district courts to consider private suits to set aside union elections and to prescribe procedures inconsistent with the union's rules for conducting a new election evidences a misreading of the decisions of this Court, as well as of the legislative history. The remedy adopted by Congress to resolve disputes concerning elections of officers was for the union to conduct a supervised election. *Wirtz* v. *Glass Bottle Blowers, supra*, 389 U.S. at 475. And the sole agent selected by Congress to supervise that election was the Secretary of Labor, not the district court or its designee. *Calhoon* v. *Harvey, supra*, 379 U.S. at 140.

This Court has repeatedly reaffirmed the Secretary's exclusive Title IV authority by requiring that complaints "concerning the conduct of the election itself" be processed "only according to the post-election procedures specified in 29 USC § 482." *Dunlop* v. *Bachowski*, 421 U.S. 560, 566 (1975). In adopting Title IV, Congress harmonized the need to eliminate election abuses with a desire to avoid unnecessary governmental intervention. *Hodgson* v. *Local Union 6799, USWA*, 403 U.S. 333, 339 (1971). Even when an election violates the standards established in § 401, the Act's "stated commitment is to postpone governmental intervention until the union is afforded the opportunity to redress the violation." *Wirtz* v. *Glass Bottle Blowers, supra*, 389 U.S. at 472. The remedial processes adopted serve the public interest by preventing individuals from blocking or delaying union elections by filing federal court suits,[22] as well as protecting unions from frivolous

[22] *Calhoon* v. *Harvey, supra*, 379 U.S. at 140.

litigation and centralizing in a single proceeding such litigation as might be warranted.[33] In short, this Court has repeatedly affirmed the Congressional enforcement scheme in the face of suits by individuals seeking to avoid the jurisdiction of the Secretary of Labor and gain direct access to the courts.

Nonetheless, some lower courts have adopted the views of commentators who have criticized the statutory scheme and the decisions of this Court which require election complaints to be processed in compliance with § 402. The First Circuit has joined those lower courts which have read *Trbovich* and *Bachowski* as undercutting *Calhoon's* policy of non-intervention in the internal affairs of unions and which view those decisions as inviting "greater harassment of offending unions" by authorizing private enforcement suits. App. B, p. 52a; *Bunz* v. *Moving Picture Mach. Operators' U.*, 567 F.2d 1117, 1124 (D.C. Cir. 1977); *Kupau* v. *Yamamoto*, 622 F.2d 449, 456 (9th Cir. 1980). And in *Kupau*, the Ninth Circuit dismissed as "difficult to take . . . literally"[34] the admonition in *Bachowski* that "provisions concerning the conduct of the election itself . . . may be enforced only according to post-election procedures." 421 U.S. at 566.

Yet none of these earlier decisions has as great a potential for disrupting the statutory scheme for resolving election problems as does the instant case. As Circuit Judge Campbell noted, the majority's decision authorizes "sweeping judicial relief" under Title I which is "both unprecedented and beyond the contemplation of the statute."[35] While the *Kupau* court extended Title I jurisdiction to cover events arising after an election but growing out of the election, even that case did not involve a request by a private individual for the district court to grant the Title IV remedy of nullification of the election results and supervision of the conduct of a new election. Indeed,

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[33] *Trbovich* v. *United Mine Workers*, *supra*, 404 U.S. at 532.

[34] 622 F.2d at 456.

[35] App. B, pp. 82a-83a.

the court there intervened to protect the winning candidate's right to assume office. 622 F.2d at 452-3. The factual circumstances of the *Kupau* case were relatively unique and did not involve delaying the union's election or changing the union's procedures.

In contrast, numerous suits seeking pre-election Title IV relief similar to that in the instant case are filed annually. Yet none of the decisions reported prior to the instant case have resulted in a federal court assuming the responsibility to conduct an election, even though the court had found an actual pre-election Title I violation. The courts have consistently respected the Secretary of Labor's authority where the remedy requested would have required the district court to supervise the details of the union election. *Robins* v. *Rarback*, 325 F.2d 929, 930-1 (2d Cir. 1963), *cert. denied*, 379 U.S. 974 (1965); *Driscoll* v. *Operating Engineers, Local 139*, 484 F.2d 682, 688 (7th Cir. 1973), *cert. denied*, 415 U.S. 960 (1974). In contrast, the district court in this case assumed control of the union's election processes. In the brief time since the decisions in this case have issued, a district court in Arizona has cited those decisions in granting a § 102 injunction altering a union's election procedures on the eve of its scheduled election. *Canez* v. *Guerrero, supra.* App. G, pp. 106a-111a.

The decisions in this case and in *Canez* are the forefront of what appears to be a trend to avoid the carefully constructed Title IV statutory enforcement procedure and to grant Title IV relief in response to Title I suits. This direct judicial intervention in internal union elections is contrary to the legislative mandate that "unions should be left free to 'operate their own affairs, as far as possible,' S. Rept. No. 1684, 85th Cong., 2d Sess., at 4-5 (1958)," a principle recently reaffirmed by this Court. *Steelworkers* v. *Sadlowski, supra*, 50 U.S.L.W. at 4630. These decisions subject unions to a multiplicity of litigation involving a single election,[26] circumvent the statutory

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[26] *E.g.*, *Kupau* v. *Yamamoto, supra*, 622 F.2d at 452-3; *Colpo* v. *Teamsters, Local 326*, 504 F. Supp. 573, 574 (D. Del. 1980), *aff'd*,

screening procedure which the Secretary of Labor was to undertake,[37] and substitute the court's judgment for "the special knowledge and discretion of the Secretary of Labor . . . the agen[t] of Government most familiar with union problems."[38] Moreover, they are the unwarranted extension of faulted decisions of other circuit courts suggesting that this Court's adherence to the statutory scheme has been eroded since *Calhoon*.

This petition should be granted to re-emphasize that a Congress "committed to minimal intervention" vested the Secretary of Labor with the broad and exclusive authority to ensure "that intervention, once warranted, [was] effective in carrying out the basic aim of Title IV." *Wirtz* v. *Glass Bottle Blowers, supra*, 389 U.S. at 473 and n.11.

II. THE LOWER COURTS' DECISIONS THWART THE STATUTORY PURPOSES BY THEIR INTERPRETATION OF WHEN AN ELECTION IS "CONDUCTED" AND ARE IN CONFLICT WITH THE DECISIONS OF COURTS OF APPEALS FOR OTHER CIRCUITS

This Court has noted that in interpreting the LMRDA, courts "must look to the objectives Congress sought to achieve, and avoid placing great emphasis upon close construction of the words." *Steelworkers* v. *Sadlowski*, *supra*, 50 U.S.L.W. at 4629; *Wirtz* v. *Glass Bottle Blowers*, *supra*, 389 U.S. at 468 and n.6; *Hall* v. *Cole*, 412 U.S. 1, 11 and n.17 (1973). Disregarding this guidance, when the First Circuit panel focused on the phrase "already conducted" in § 403 in order to determine whether the Secretary of Labor had exclusive authority to review Local 82's election, the majority settled on a mechanistic interpretation; specifically, that an election has not been "already conducted" until the ballot tabulation process has been "completed." App. B, pp. 65a, 67a. Such an

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659 F.2d 399 (3d Cir. 1981); *Rollison* v. *Hotel Employees, Local 879*, 677 F.2d 741, 743 (9th Cir. 1982).

[37] *Trbovich* v. *United Mine Workers*, *supra*, 404 U.S. at 532.

[38] *Calhoon* v. *Harvey*, *supra*, 379 U.S. at 140.

inflexible policy fosters a "race to the courthouse" and encourages pre-election suits concerning "the conduct of the election itself." *Dunlop* v. *Bachowski*, *supra*, 421 U.S. at 566.

The First Circuit's decision directly conflicts with those in other circuits. The Third Circuit has held an election to have been "already conducted" once balloting has occurred, even where there has not been a final tabulation of the results. *McDonough* v. *Local 825, Operating Engineers*, 470 F.2d 261, 264 (3d Cir. 1972). The Second Circuit has found Title IV jurisdiction to extend over practices occurring "subsequent to the nomination and voting." *Libutti* v. *DiBrizzi*, 337 F.2d 216, 218 (2d Cir. 1964). District courts in that circuit have followed *McDonough*, concluding that to issue an injunction "after the actual voting process is under way would seriously undermine the goals of Title IV" by allowing the federal courts to be used to disrupt union elections."[39] *Laski* v. *Intern. Org. of Masters, Mates & Pilots*, 502 F. Supp. 134, 136 (S.D.N.Y. 1980); *New Action Coalition* v. *Local 2, United Fed. of Teachers*, 510 F. Supp. 1208, 1211 (S.D.N.Y. 1981). In each of those cases, injunctions, sought after mail balloting packets had been distributed to the members but before the ballots were returned to be tabulated, were denied, the courts finding § 402 to provide the exclusive remedy at that point.

Adoption of the test articulated by the First Circuit will result in the circumvention of the Title IV enforcement procedure whenever an offense actionable under that Title also could be characterized as invoking Title I.[40]

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[39] The disruption such a policy would permit has been amply demonstrated in this case. The election originally scheduled for December 13, 1980 was enjoined on December 12, after the vast majority of the votes had been cast and returned via the mail. The election ordered by the district court was not completed until December 12, 1981, a year later to the day.

[40] The allegations here, for example, are routinely dealt with by the Secretary of Labor as violations of § 401. E.g., *Hodgson* v.

Lawrence v. *Utility Wkrs. U. of America*, 509 F. Supp. 1151, 1156-7 (N.D. Ohio 1981). As the lower courts here have noted, there exists a great desire on the part of individual members to pursue election complaints directly in the courts. App. A, pp. 11a-12a, App. B, p. 60a. Yet the administrative procedures of Title IV were intentionally adopted to accomplish specific goals[41] and evidence the Congressional intent to treat elections of officers differently than Title I complaints, entrusting to the Secretary of Labor the vindication of protected rights. *McGuire* v. *Grand Int'l Div. of Bro. of Loc. Eng.*, 426 F.2d 504, 508 (6th Cir. 1970).

The rule adopted by the First Circuit is inflexible, substitutes that court's view of how the Act should be enforced for that of the Congress, and, most importantly from the point of view of the exercise of this Court's jurisdiction herein, conflicts with decisions of other circuit courts of appeals.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

GARY S. WITLEN
Counsel of Record
25 Louisiana Ave., N.W.
Washington, D.C. 20001
(202) 624-7466

KATHRYN M. NOONAN
McDONALD & NOONAN
27 School St.
Boston, Mass. 02108
(617) 523-1624
Attorneys for Petitioners

DAVID PREVIANT
25 Louisiana Ave., N.W.
Washington, D.C. 20001
(202) 624-6945
Of Counsel

District 6, Mine Workers, 474 F.2d 940, 942-43 (6th Cir. 1973); *Wirtz* v. *Nat'l Maritime U.*, 399 F.2d 544 (2d Cir. 1968).

[41] *Trbovich* v. *United Mine Workers*, *supra*, 404 U.S. at 532.